



Mr. Greenberg's Direct Dial  
(314) 516-2687  
(314) 241-4245 (fax)  
reg@greensfelder.com

Greensfelder, Hemker & Gale, PC  
2000 Equitable Building  
10 South Broadway  
St. Louis, MO 63102

*Affiliate Office:*  
Greensfelder, Hemker & Gale  
12 Wolf Creek Drive, Ste. 100  
Belleville (Swansan), IL 62226

T: 314-241-9090  
F: 314-241-8624  
www.greensfelder.com

1767   
**RECEIVED**  
MAR 03 2003

February 27, 2003

**SUPERFUND DIVISION  
OFFICE OF THE DIRECTOR**

Michael Ribordy  
Remedial Project Manager  
U.S. Environmental Protection Agency  
77 West Jackson Blvd. – SR-6J  
Chicago, IL 60604-3590

William Muno  
Director, Superfund Division  
U.S. Environmental Protection Agency  
77 West Jackson Blvd. – SR-6J  
Chicago, IL 60604-3590

Re: Statement of Sufficient Cause Under Section 106(b)(1)  
of the Comprehensive Environmental Response, Compensation  
Recovery Act (CERCLA)

Gentlemen:

We are counsel to Blue Tee Corp., which is the successor in interest for certain purposes to the American Zinc Company, and hereby respond on behalf of Blue Tee Corp. and the American Zinc Company (hereafter collectively "American Zinc") with respect to the Unilateral Administrative Order ("UAO") and Record of Decision ("ROD") issued by the United States Environmental Protection Agency ("EPA") dated October 13, 2002. The UAO has been issued to approximately 75 potentially responsible parties ("PRPs") and provides that an interim groundwater remedy is to be instituted through construction of a barrier wall on property owned by Solutia, Inc. ("Solutia"), successor to Monsanto Company.<sup>1</sup> American Zinc hereby responds by asserting that there is sufficient cause pursuant to Section 106(b)(1) of the Comprehensive Environmental Response, Compensation and Recovery Act ("CERCLA"), 42 U.S.C. § 9606(b)(1), for American Zinc to decline to independently initiate actions in compliance with the Unilateral Administrative Order at this time. As discussed in more detail below, sufficient cause exists for primarily two reasons:

1. American Zinc is not a responsible party for the Operable Unit Groundwater Contamination.

<sup>1</sup> We understand that Solutia, Inc., Pharmacia, Inc. and possibly Monsanto Company and Pfizer, Inc. have succeeded to the liability at issue here. For purposes of this letter, references to "Solutia" include, unless otherwise indicated, the related entities.

2. Independent action by American Zinc is inappropriate Solutia's responsibility for the underlying contamination and Solutia's commitment to undertake the work.

Each of these reasons and bases for sufficient cause are set forth in more detail below.

American Zinc has only limited familiarity with the matters pertaining to Area 2, and therefore, its response must be seen as tentative and preliminary. American Zinc reserves its right to amend or modify its response as facts are discovered in the course of its investigation.

Finally, this response is being submitted at this time following the determination that an agreement with Solutia could not be reached among certain PRPs for the sharing of costs for implementation of work required by the UAO. As described below, American Zinc and others submitted a financial proposal to Solutia in the hope that a cost-sharing agreement could be reached, obviating the need for an individualized and specific response to the UAO. Upon learning that this agreement could not be reached, American Zinc prepared this response. Because of delays in learning that an agreement was not or could not be reached, as well as difficulties occasioned by the recent inclement weather, this response is being submitted at this time.

A. Background.

1. Area 2.

American Zinc is a member of a working group formed with nine other PRPs for Area 2 ("Area 2 PRP Working Group") to perform a remedial investigation and feasibility study with respect to five disposal sites located in Area 2 (Sites O, P, Q, R and S). The work is being performed pursuant to an Administrative Order on Consent. The work includes extensive soil and groundwater evaluation of the disposal sites, as well as analysis of sediment adjacent to the Mississippi River. Much of the field work and sampling has been completed and it is anticipated that a draft Remedial Investigation/Feasibility Study will be submitted to the Environmental Protection Agency in 2004.

American Zinc is identified in the UAO as a PRP only with respect to Site O. Site O is identified as an area that contained sludge ponds due to the disposal of sludge generated by the wastewater treatment system of the Village of Sauget. American Zinc is not identified in the UAO as a PRP with respect to any other identified source of groundwater contamination.

On receipt of the UAO and, as documented by correspondence already received by the EPA, the Area 2 PRP Working Group reviewed the matter and initiated extensive discussions with Solutia regarding implementation of the UAO. In the course of negotiations,

Solutia advised that it would commence the work required by the UAO but seek contribution from the members of the Area 2 PRP Working Group, as well as others. In response, the Area 2 PRP Working Group and other PRPs submitted a monetary proposal to Solutia to assist in the financing and implementation of the work required by the UAO. Solutia has since responded, rejecting the proposal. It is uncertain what steps will be taken next to reach an agreement on contribution, but the parties are discussing other options for settlement.

The UAO is designed to prevent contaminated groundwater from reaching the Mississippi River. However, the express intent is limited and "encompasses the groundwater contamination leaching to the Mississippi River adjacent to Site R and the resulting impact area in the Mississippi River." Letter dated October 3, 2002 to PRPs transmitting the UAO from William Muno at 1. As explained in the UAO, Site R is a closed disposal area that was owned by Solutia and was operated as a disposal site "for Monsanto from 1957-77." UAO at 6. The UAO further notes that process waste from Monsanto's Krummrich and Queeny plants were deposited at Site R. *Id.* The UAO further documents that contamination reaching the Mississippi River is due to a plume containing high levels of volatile organic compounds ("VOCs") and semi-volatile organic compounds ("semi-VOCs") that are traced directly to Site R, as well as Monsanto's Krummrich plant. UAO at 3-4. No metals are identified as contaminants of concern, nor was contamination due to metals cited as a ground for issuance of the UAO.

2. Area 1.

American Zinc is a party to litigation filed by the United States and Solutia pending in the United States District Court for the Southern District of Illinois, East St. Louis Division, *United States of America v. Monsanto Chemical Company, et al.*, Civil Action No. 99-63-DRH (E.D.Ill., filed Jan. 23, 1999). American Zinc was not an original party to this action, which was filed by the United States in 1999. American Zinc was not added as a party by the United States. In 2001, however, Solutia and Pharmacia Corporation filed a third party action against American Zinc, and that litigation is ongoing at this time.

Extensive discovery in the Area 1 litigation has revealed that American Zinc's waste practices were a negligible source of the contamination found in Sauget Area 1. American Zinc's facility was in operation from approximately 1941 to 1971. During this limited period, American Zinc was connected to the North Trunk of the Sauget sewer system and American Zinc's wastewater was discharged directly through the sewer system. At no time did American Zinc discharge its wastewater directly to Dead Creek, in contrast with the discharge practices that occurred for decades by Solutia, Cerro Copper and other industries in the Sauget area.

Limited evidence has shown that trash, and possibly certain operating residues, were taken by a hauler from the American Zinc facility and deposited in Landfills H or I. The

evidence reveals that these haulings averaged one truckload per week. This volume is in contrast with the volume of disposal in landfills by Solutia during the same period. Solutia's allocation expert, Robert Dennis, opined that Solutia's volume of disposal in landfills from its Krummrich and Queeny plant averaged 50 million tons per year. In comparison, as admitted by the expert, American Zinc's disposal in the landfills amounts to less than one percent (1%) per year of the volume that was deposited by Solutia.

There is a similar stark contrast in the type, nature and relative toxicity of the waste. In discovery, Solutia has contended that the primary contaminants associated with American Zinc's waste streams were zinc and manganese. Solutia's fate and transport expert, Dr. Charles Menzie, analyzed the data in his report and found, with only limited exception, that the contamination levels for zinc and manganese in Area 1 are below Illinois TACO levels for residential sites. All of the sample results for zinc relied upon by Dr. Menzie in his expert report are below the Illinois TACO levels for industrial sites. In contrast, the levels of contamination found in the Dead Creek sediments, groundwater and landfills for VOCs, semi-VOCs and PCBs associated with Solutia's waste streams are extremely high. PCPs, dioxin, benzene and other organic contaminants have been found to exceed Illinois TACO levels by orders of magnitude of as much as three or four. None of these organic contaminants are of the type that would likely be found in the waste streams generated by American Zinc during its limited period of operation.

B. Reasons for Sufficient Cause.

1. American Zinc Is Not A Responsible Party For The Operable Unit Groundwater Contamination.

The sole basis for liability for American Zinc cited in the UAO is the allegation that American Zinc generated wastes which were disposed of or released at Site O. UAO at ¶ 19. There is no allegation that wastes generated by American Zinc were disposed of at Sites Q, R or S, or that American Zinc was a non-specific generator or transporter. See UAO at ¶¶ 19-20.

Site O consists of four closed sludge lagoons associated with the operation of the Village of Sauget wastewater treatment plant. The UAO notes that these lagoons were utilized to dispose of sludge from the treatment plant between 1966-7 and 1978. UAO at ¶ 16(b).

American Zinc is unaware of what actions it took that would result in liability. American Zinc was neither an operator nor an owner of the wastewater treatment plant. American Zinc did discharge its wastewater through the Village of Sauget sewer lines, but was not the generator of the sludge at the treatment plant that resulted in the disposal at the lagoons. In fact, American Zinc was in operation for only three of the approximately 12 years during which sewer sludge was purportedly deposited at Site O.

Moreover, the contaminants of concern at Site O are VOCs and semi-VOCs. UAO at ¶ 18(a). The primary contaminants of concern at Site O appear to be benzenes, PCBs and 4-chloroaniline. These are not contaminants of concern associated with American Zinc's waste streams. Instead, as previously noted, the primary constituents of American Zinc's wastestream are alleged to be zinc and manganese. These items were not identified as contaminants of concern for Site O.

Nor is zinc or manganese identified as contaminants of concern for the contaminated groundwater that is to be prevented from reaching the Mississippi River. The UAO recognizes that the contaminants of concern in the contaminated groundwater are VOCs and semi-VOCs, and not metals. Indeed, metals were not even identified as contaminants of concern in the UAO and there apparently has been no testing for metals specifically for this UAO. Contamination due to metals is not utilized as a basis for the issuance of the UAO.

In short, the UAO fails to provide a basis for identifying American Zinc as a PRP. American Zinc is clearly not identified as a PRP for Sites R, S, and any other sources said to have contributed to groundwater contamination. The only site identified with American Zinc is Site O, which constituted the sludge lagoons for the Sauget wastewater treatment plant. However, American Zinc is not an owner or operator of the wastewater treatment plant and was not a generator of the sludge, which was produced by the wastewater treatment plant.

2. Action By American Zinc Would Be Inappropriate Given That The Work Under The UAO Is Being Implemented By Solutia.

Solutia is currently taking action to implement the work required by the UAO. American Zinc, in conjunction with other members of the Area 2 PRP Working Group and other PRPs, approached Solutia to attempt to develop a working approach by which all parties could be involved in the implementation of the work required by the UAO. In these negotiations, Solutia made clear that Solutia would undertake the responsibility for implementing the work required by the UAO and look to the members of the Area 2 PRP Working Group and other PRPs for financial contribution. Given Solutia's commitment to implement the work required by the UAO, independent action by American Zinc, other than as a financial contributor, would be unwieldy and unwarranted.

American Zinc, in conjunction with other members of the Area 2 PRP Working Group, has made an offer to Solutia to assist in the financing of the work for the implementation of the work required by the UAO. This offer has been declined by Solutia. The parties are currently at an impasse but are continuing to discuss the matter to seek a potential resolution. The parties are also considering alternative dispute resolution mechanisms to determine if an equitable sharing arrangement can be developed. If such an agreement cannot be reached, it is likely that Solutia will institute litigation for contribution, as it has instituted for the Area 1 remediation costs.

It should be added that holding Solutia responsible for the primary implementation of the work required by the UAO is only fair and reasonable. The Operating Unit at issue is adjacent to and stems from Site R. Site R was owned by Solutia and operated as a landfill for wastes from Solutia's Krummrich and Queeny plants. Although there is no evidence to show that Site O impacted the groundwater contamination, Solutia was the largest user of the Sauget sewer system. Indeed, Solutia was the largest generator of wastes disposed at any landfill site, to the extent any of such sites in Areas 1 or 2 contributed to the groundwater contamination. The UAO makes clear that the contamination pattern appears to track directly from the Krummrich plant or Site R, and that is precisely the contamination to be remedied by the UAO. Under these circumstances, it is only appropriate that Solutia implement the UAO and any lingering liability for third parties can be resolved between Solutia and those parties by agreement or through litigation.<sup>2</sup>

C. Conclusion.

For the foregoing reasons, American Zinc believes that there is sufficient cause for its failure to implement the UAO and requests that the EPA amend the UAO to delete American Zinc Company and Blue Tee Corp. as Respondents.

Sincerely,



Richard Greenberg

REG/seh

cc: Terri Faye

<sup>2</sup> American Zinc also adopts the arguments advanced by Union Electric Company, d/b/a Ameren UE, in its letter dated November 13, 2002, entitled "Statement of Sufficient Cause Defense Under Section 106(b)(2) of the Comprehensive Environmental Response, Compensation Recovery Act ("CERCLA")" at pp. 4-5.